

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 14, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 14, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Gerry Reppucci, Chair
Jack Currier, Vice Chair
J.P. Boucher, Clerk
Mariellen MacKay
Rob Shaw
Kathy Vitale

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Reppucci explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Reppucci explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Reppucci also explained procedures involving the timing light.

Note: audio for the meeting is poor.

Mr. Reppucci said that he is going to take the 3 Dora Street case first, as the applicant has little children.

- 1. Nabil & Ihsane Eloufir (Owners) 3 Dora Street (Sheet 111 Lot 100) requesting special exception for a major home occupation for an in home day care for four children. R9 Zone, Ward 6.**

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Mariellen MacKay
Rob Shaw

Ihsane Eloufir, 3 Dora Street, Nashua, NH. Mrs. Eloufir said she is asking to open up a home day care center for four children. She said that they have a 4 bedroom house and the area where the day care would be would be on the first level.

She said that the yard is open, and has a long driveway for parking, to allow parents to drop off children.

Mr. Reppucci asked if she is aware of the special regulations for an in-home day care.

Mrs. Eloufir said that she was emailed them from the City.

Mr. Reppucci asked if she is going to be in compliance with the special regulations, and read them to her.

Mrs. Eloufir said she can meet the requirements.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Dianne Sylvester, 2 Dora Street, Nashua NH. Mrs. Sylvester also wrote a letter that was received by the Board. Mrs. Sylvester said she lives across the street. She said she is opposed to the application. She said the area is busy, with Bishop Guertin High School nearby, with 800 students, and Lund Road is busy. She said that there is a recreational park nearby, and commercial trucks. She said that a day care will jeopardize the balance in the neighborhood.

Mrs. Sylvester said that there are three driveways right near their house, and it's a short street. She said that parking is limited and people can't park on the street. She said by having a business entity here, with additional traffic is unsustainable.

Mr. Reppucci stated that a special exception is a permitted use, provided it meets the special regulations, it is not a variance further, in-home day cares are a type of land use that is supported by the State of New Hampshire RSA's.

Jason & Joy Wesinger, 4 Dora Street, Nashua, NH. Mr. Wesinger said that they have concerns about the increase in traffic, and possible reduction in property value. He said that they are also concerned about the additional noise. Mrs. Wesinger said that they could fit four cars in the driveway, but they'd have

to wait for one to leave. She said they're concerned if the day care grows to more children.

Mr. Reppucci said that if they do grow, they'd have to come back to the Board first.

Wayne Belanger, 5 Dora Street, Nashua, NH. Mr. Belanger said that he has the same concerns that have been brought up by the other neighbors, especially about the traffic. He said that between the traffic and possible noise situation, and the concerns about the property values as a result of the business, he said he's lived here a long time and these are the concerns. He said he didn't think it's a good situation.

SPEAKING IN FAVOR - REBUTTAL:

Mrs. Eloufir said that her goal is to watch four children. She said that she is starting this business to help her husband. She said if it's a sunny day, the children would be outdoors for one hour in the morning, and one hour in the afternoon. She said that pick-up is at 4:30 - 5:00. She said that the parking is fine, and parents will pick up the children at staggered times.

Ms. Vitale said that the picket fence looks lower than the 6 foot requirement, and asked if there is a plan to replace it.

Mrs. Eloufir said if that is the requirement, they'll meet it.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mrs. Sylvester said that with four children, that's 40 more vehicles backing out and driving on the street.

Mr. Currier asked if the homeowner moves out, if the approval would remain with the property.

Mr. Falk said no, it's just for this homeowner, as there is State of New Hampshire approval for the person who owns the day care. He said that if she moved out, the next homeowner, if they run a day care, would have to request a special exception as well.

Mr. Falk said that anyone can watch three children in their home by right, therefore, this request is really to watch only one child above what anyone can do by right.

MOTION by Mr. Currier to approve the special exception on behalf of the owner as advertised. Mr. Currier stated that the use is listed in the Table of Uses, Section 190-36 B.

Mr. Currier said that the use will not create undue traffic congestion or unduly impair pedestrian safety, there was a lot of discussion about traffic congestion, but the Board finds that by having four children at staggered times will not create undue challenge to the situation that is already present in the neighborhood.

Mr. Currier said that the use will not overload public water, drainage or sewer or other municipal systems, it's all presently served.

Mr. Currier said that by testimony, the applicant states that they will comply with the special regulations, the one having the most discussion tonight is about the fence, and the Board believes that if this business moves forward, the fence will meet that requirement.

Mr. Currier said that the use will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents. He said that for a special condition, there will be no outdoor play before 9:30 a.m., it's an otherwise quiet neighborhood except for the school, and it's reasonable for this use.

SECONDED by Mrs. MacKay.

Mr. Reppucci said the Board should make it a requirement, and a special condition, that the fence be 6 feet high. He said he'd prefer to not have the requirement about the time, but said that the Board can have its will.

Mr. Currier said he'd amend his motion that the fence should be brought up to the six foot height as a special condition, but wants to hold on the 9:30 time, and feels it's appropriate to keep.

Mrs. MacKay said if this were a variance it would be different.

MOTION CARRIED UNANIMOUSLY 5-0.

2. **Stephen J. & Andrea M. Curtis (Owners) 213 Harris Road (Sheet C Lot 501) requesting special exception to allow an accessory (in-law) dwelling unit within existing house. R9 Zone, Ward 9. [TABLED FROM 5-24-16 MEETING]**

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Kathy Vitale
Rob Shaw

MOTION by Mr. Reppucci to take the case off the Table.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

Stephen Curtis, 213 Harris Road, Nashua, NH. Mr. Curtis said that they have their downstairs area for the unit. He said that space is already there, and want a permit so that it's a legal apartment. He said that after his mother-in-law passed, the only people who used the unit was their youngest son. He said that they now want to rent the unit.

Mr. Reppucci said that they cannot rent it out, it can only be blood relatives can live there, or by marriage. He said that is the rule as of today, and in June 2017, there is a new State Statute that will eliminate the requirement for an in-law apartment to be occupied by a family member or a member by marriage. He said that as of today, even if the Board approves it, they wouldn't be allowed to rent it until next June. He said it's a brand new Statute, it was just changed.

Mr. Falk said that right now, they could use it for a family member or someone related by marriage.

Mr. Reppucci said that right now, it's restricted to who can occupy it. He said with the new law, you can rent it to someone outside a family member. He said that there may be other changes in the new law as well.

Mr. Falk said that currently, any approval by the Zoning Board, applicants have two years in which to obtain a building permit to make it official. He said that the City's Code may change, depending upon the final disposition of the State's new law.

Mr. Shaw said that there is a 30% size limit, and an area limit of 700 square feet, and a covenant needs to be filed with the Registry of Deeds stating that all the special conditions have to be met. He said that the Board needs concurrence that they meet all the criteria for approval.

Mr. Reppucci said that they are under the 700 square foot limit, it's 618 square feet.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Reppucci said that the Board can approve it as it sits, but doesn't know if they are in compliance with all the special requirements for the special exception. He said that respectfully, the applicant needs to do a little more work on the application to know what the requirements are. He said he'd be inclined to table it, and give the applicant a chance to work with staff and make sure they're in compliance with all the things they need to be.

Mr. Currier agreed with that rationale, and it will also give the applicant a chance to peruse that new law, as they may be able to take advantage of that anyways.

Mr. Shaw said that he's fine with tabling the case. He said he doesn't have the greatest level of comfort that the special criteria are met with certainty. He said that the 618 square foot size is noted, but we're not sure of the percentage, so it's possible they need a variance for that.

Ms. Vitale also agreed, and would like to see an exact calculation of the area.

MOTION by Mr. Reppucci to Table the case to the June 28, 2016 meeting, to work with the Planning Department to see a concise summary that they're in compliance with the special regulations for a special exception.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Sui Ying & Sun Ho Fang (Owners) Key to Escape, LLC (Applicant) 3 Bud Way, Unit #21 (Sheet E Lot 1353) requesting use variance to open a recreation enterprise, an "escape room" within an existing building. GI Zone, Ward 1.

Voting on this case:

Gerry Reppucci
Kathy Vitale
J.P. Boucher
Jack Currier
Rob Shaw

Attorney Andrew Prolman, Prunier & Prolman P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prolman said that they are proposing a new business to Nashua, it is unique, something this Board has not seen, it's an escape room, a recreational enterprise. He said that they take a group of up to six people, lock them into a room, and are given a series of clues and puzzles to get out of the room within 60 minutes. He said that there are different themes in the rooms, and they periodically change them.

Atty. Prolman said that he submitted a business summary. He said that the parking for this building, consisting of commercial condos', is unassigned common area. He said that there is ample parking, and there is a cross-parking easement that allows this building and the neighboring building to share parking spaces.

Atty. Prolman said that the escape room will fit right in, and will add to the variety of uses. He said that this unit has been vacant for at least three years. He said that they will be doing interior renovations only. He said that they will require six parking spaces for this use, one space per 650 square feet

of area. He said that a majority of their operating hours are off-hours, Thursday and Friday evenings and on the weekends.

Atty. Prolman went over all the variance points of law.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the use variance application as advertised on behalf of the owner as advertised. Mr. Currier said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, which is a big warehouse style industrial complex with a lot of smaller business condominiums, and the variance is reasonable.

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Currier said that it will have no negative impact on surrounding properties; it may enhance property values. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

4. Linear Retail Nashua #1, LLC (Owner) 225 Daniel Webster Highway (Sheet A Lot 190) requesting variance to exceed maximum ground sign area, 150 sq.ft permitted, 315 sq.ft allowed by 8-12-14 variance, an additional 20 sq.ft requested for plaza name at top of existing ground sign for a total of 335 sq.ft. HB Zone, Ward 8.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher

Mariellen MacKay
Rob Shaw

Attorney Thomas Jay Leonard, Welts White & Fontaine P.C. 29
Factory Street, Nashua, NH. Atty. Leonard said that the application is for a small addition to an existing ground sign. He referred the Board to a picture in the package of the existing sign. He said that Linear Retail also owns two other retail shopping centers immediately next door. He said that with this request, it will make the sign consistent with the other two centers for identification with the coordinated signage.

Atty. Leonard said that the only change to the existing sign is at the very top of it, it's an additional 20 square feet, and it will be the name of the plaza as Daniel Webster Plaza. He said that the top panel in the other plazas also have the plaza name. He went over the points of law for a variance. He said that it is a negligible change overall as the sign is existing.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Shaw to approve the variance application as advertised on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, it will provide a consistency with the other two plazas they own, and the additional signage is relatively minor and negligible, and will help with identification to this center.

Mr. Shaw said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Shaw said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

5. Josefina & Enrique Ruiz (Owners) 34 Bell Street (Sheet 135 Lot 80) requesting variance to exceed maximum driveway width, 23 feet existing, (12 feet on May Street, 11 feet on Bell Street) - 24 feet permitted, an additional 10 feet requested on Bell Street for a total width of 33 feet. RA Zone, Ward 3.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Mariellen MacKay
Rob Shaw

Enrique Ruiz, 34 Bell Street, Nashua NH. Mr. Ruiz said that he is requesting a variance to exceed the maximum driveway width. He said that he has two separate driveways, one on May Street and one on Bell Street. He said that he got approval to build a two-car garage facing Bell Street, and wants to keep the existing 12 foot wide driveway on May Street.

SPEAKING IN FAVOR:

Letter of support from the Drake's at 35 Bell Street, which was read into the record.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the request is to maintain an old driveway on May Street, and to add new driveway on Bell Street.

Mr. Currier said that the extra driveway width would be within the spirit and intent of the ordinance, as Bell Street is a dead-end and there is low traffic in the area.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

6. Stan & Laura Rogers (Owners) Kenneth & Lorrie Dunn (Applicant) 26 Delaware Road (Sheet D Lot 318) requesting variance to exceed maximum fence height, 6 feet permitted, 8 feet proposed on both sides of the house. R9 Zone, Ward 5.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Mariellen MacKay
Rob Shaw

Ken Dunn, 26 Delaware Road, Nashua, NH. Mr. Dunn said that they are requesting a fence 8 feet tall on the sides of his house, as the houses are close together and there is no privacy. He said it's going to be taller on the sides, it wouldn't go towards the street at all.

SPEAKING IN FAVOR:

Letter from Stan & Laura Rogers read into the record for support.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Currier said that what is giving him comfort is that the homeowner association is giving their approval for this.

Mr. Reppucci said he believes its leased land, and the only person here is the applicant.

Mr. Reppucci asked if there was any concern that the fence would be on both sides.

Mr. Dunn said no.

Mr. Reppucci asked if the abutters got notified, or if just the association did.

Mr. Falk said that staff notified all the abutters. He said that there were quite a few that were notified. He said that even if it is a condominium development, we only are required to notify the owners anyways.

Mr. Reppucci said that he's surprised that the association doesn't have a concern with it. He questioned if its ok for their community to have eight-foot fences like that. He said that eight-foot fences are a big deal, and can have a big impact on abutting properties.

Mr. Boucher said its leased land, and the owner owns the property, and in the end, the owner is going to make their own rules for the community, as sometimes they don't allow motorcycles, and sometimes they even approve your car, and they tell you what you can and can't do on your property. He said it appears as if the association is saying that they own the property, and they're ok with the eight-foot high fence, as long as the City's Zoning Board says it's ok.

MOTION by Mrs. MacKay to approve the variance application as advertised on behalf of the applicant. She said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, due to the topography, the fence will allow for more privacy and allow the owner to use their property as they see fit.

Mrs. MacKay said that the request would be within the spirit and intent of the ordinance.

Mrs. MacKay said that it will have no negative impact on surrounding properties, the owner of the land did send a letter of support and concurrence. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1 (Mr. Reppucci).

7. Michelle Roy (Owner) 12 Wilder Street (Sheet 84 Lot 97) requesting variance to encroach 6 feet into the 7 foot required left side yard setback to construct an open deck. RC Zone, Ward 4.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Mariellen MacKay
Rob Shaw

Michelle Roy, 12 Wilder Street, Nashua, NH. Ms. Roy said that they're applying for a variance to encroach into the side yard, it would be about 21 inches high.

Mr. Currier said that the deck is no further closer than the house is.

Ms. Roy agreed.

Mr. Currier said that the deck will enhance the yard, and have some enjoyment and privacy, it's a reasonable request and will enhance the house.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mrs. MacKay to approve the variance application as advertised on behalf of the applicant. She said that the

variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the home is already built close to property line, and the proposed deck will be an extension of the home, and any other layout of the deck would diminish the use of their already small yard, and enables the family to use their property to a manner in which they would prefer.

Mrs. MacKay said that the request would be within the spirit and intent of the ordinance.

Mrs. MacKay said that it will have no negative impact on surrounding properties. She said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REGIONAL IMPACT:

The Board determined that there are no cases that have Regional Impact.

REHEARING REQUESTS:

None.

MINUTES:

4-12-16:

4-26-16:

5-10-16:

No action taken on these three sets of Minutes.

5-24-16:

MOTION by Mr. Reppucci to approve the Minutes, waive the reading, and place them in the permanent files.

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SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0 (Mr. Carrier abstained).

ADJOURNMENT:

Mr. Reppucci called the meeting closed at 9:02 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing